In the present case the plaintiff has not even given the approximate time of the accident. Nor has he stated whether at the time of the accident he was on the road or off the road e.g. on the grass verge. Again, he has not stated whether he was standing stationary or was in motion, and if in motion, the direction in which he was moving. All that the plaintiff has stated is that on or about the 19th day of March, 1964, he was lawfully at or near Ayer Rajah Road in Singapore when he was run into and knocked down by a motor van driven by a servant of the defendants and which was travelling along Ayer Rajah Road in the direction of Alexandra Road. In my opinion these particulars are manifestly inadequate. I therefore made on order in terms of the defendants' application.

Order in terms of application.

Solicitors: *Murphy & Dunbar; Drew & Napier.*

SUNDRALINGAM v. RAMANATHAN CHETTIAR

[O.C.J. (MacIntyre J.) June 24, 1966]

[Ipoh — Civil Appeal No. 9 of 1966]

Moneylenders — Promissory note written in English — No attestation — Whether void — Stare decisis — Whether court bound to follow decision of a court of co-ordinate jurisdiction — Moneylenders Ordinance. 1951, s. 27.

This was an appeal from the decision of the learned magistrate who had given judgment against the appellant in an action by a moneylender for the sum of $832.65. The defendant had argued that the promissory note in the case was void for non-compliance with section 27 of the Moneylenders Ordinance, as it was written in English and should have been attested. The learned magistrate acting on the authority of *Narayanan* v. *Alagappa* (1) held that attestation was not necessary as the appellant was aware of the contents of the note when the loan was advanced.

Held: although the appellant did not understand English there was no evidence to show that he did not know the terms of the contract in the promissory note which he had signed and therefore the court was bound by authority to hold that no attestation was necessary in this case.

[Editorial Note: Reference may be made to the *Editorial Note* to *P. N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.*(3) and *Mallal's* Supreme Court Practice Vol. 1 pp. 929 - 930 on the question of *stare decisis.* See also *Ng Kay Thong* v. *Chan Shon Shong,* p. 305 *post.*]

Cases referred to:—

(1) *Narayanan* v. *Alagappa* [1956] M.L.J. 23.

(2) *Natha Singh* v. *Syed Abdul Rahman and another* [1962] M.L.J. 265.

(3) *P. N. Mohamed Ibrahim* v. *Yap Chin Hock and another* [1954] M.L.J. 127.

(4) *Young* v. *Bristol Aeroplane Co. Ltd.* [1944] 2 All E.R. 293.

CIVIL APPEAL.

Leong Choo Kong for the appellant.

P. P. Dharmananda for the respondent.

Cur. Adv. Vult.

MacIntyre J.: This is an appeal from the decision of the learned magistrate at Ipoh whereby judgment was entered for the respondent against the appellant in a moneylender's action for the sum of $832.65, interest and costs.

In the court below the appellant had pleaded that the promissory note was void for non-compliance with the provisions of section 27 of the Moneylenders Ordinance, 1951, in that the note was written in the English language which he did not know and should, therefore, have been attested. But the learned magistrate acting on the authority of the decision in *KR. Narayanan* v. *AL. Alagappa* (1) held that attestation was not necessary in this case as the appellant was aware of the contents of the note when the loan was advanced. He presumed that appellant had knowledge of the contents of the promissory note from the fact that he had entered into similar transactions with the respondent in the past.

Section 27 of the Moneylenders Ordinance reads as follows:

"27. (1) Whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such note the note shall be attested by an Advocate and Solicitor of the Supreme Court, a President of Sessions Court, a Magistrate, District Officer, Justice of the Peace, Registrar of a Sessions Court, Commissioner for Oaths, or such other person as may be appointed by the Minister generally for such purpose. The attestor shall explain the terms of the promissory note to the borrower, and shall certify thereon that the borrower appeared to understand the same. The money borrowed shall be paid over by the lender to the borrower in the presence of the attestor who shall certify the fact upon the promissory note.

(2) Any promissory note required to be attested under this section and not so attested shall be void and the lender shall not be entitled to recover any loan for which such note is taken as security."

Now in *Narayanan* v. *Alagappa, supra,* Storr J. interpreted section 27 as follows:

"Now the wording of this section provides that the terms of the promissory note are to be explained to the borrower if he does not understand the written language on such promissory note and that to me means simply what it says. If the borrower does not understand what is written on the promissory note, then an attestor shall explain the terms of the note; it does not mean that, if the borrower does not understand the language in which the note is written, i.e. either English or Malay (*vide* section 16), there must be an attestor, if he undersands the terms and contents of the note. I think, therefore, on that point in his grounds of judgment the learned magistrate was correct in his interpretation of section 27."

Although the decision of Storr J. has stood unchallenged for 10 years, with respect, I am unable to agree with his interpretation of the section. The first requisite of that section is that every promissory note written in a language not understood by the borrower, must be attested. The words "not understanding the written

language on such note" means, in my humble opinion, an inability to read and comprehend the language in which the note is written.

In *Natha Singh* v. *Syed Abdul Rahman & Anor.*[2] Hepworth J. made an observation on the meaning of section 27 of the Moneylenders Ordinance which is of some assistance. That was also an appeal on the question of the illegality of a note for want of attestation but since the point was not raised in the court below and no evidence was recorded in regard to the borrower's knowledge of the English language the appeal was dismissed as the note *ex facie* showed no evidence of illegality. But in passing Hepworth J. remarked, and I quote:

"The promissory note with which we are concerned was legal on the face of it. It would only be illegal if the borrower did not understand the English language."

In my opinion section 27 of the Ordinance was enacted for the purpose of regulating the business of moneylenders and to enforce upon them a code of discipline in order to ensure that no borrower is victimised. To that end, attestation was made compulsory irrespective of whether the borrower understood the contents of the note or not as long as he could not ascertain the terms of the contract by his own knowledge of the language in which it is written.

However, the observation of Hepworth J. is *obiter dicta* and the decision in *Narayanan* v. *Alagappa, supra,* being a decision of a court of co-ordinate jurisdiction sitting on appeal, I am bound to follow it. It was so held by Wilson J. in *P. N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.*[3] following the decision in *Young* v. *Bristol Aeroplane Co. Ltd.*[4]

The decision in *Narayanan* v. *Alagappa, supra,* was based on a finding that the borrower, notwithstanding his ignorance of the language in which the note was written was nevertheless aware of the contents of the note. The second ground of appeal in the present case is that the learned magistrate erred in finding that the appellant was aware of the contents of the note. It is reasonable to presume that every person who enters into a written contract is aware of the terms of the contract to which he had appended his signature unless the contrary is proved. I see no reason why that presumption which is applied to all sorts of contracts should not be applied to a moneylending contract. In this case the appellant admitted that he was familiar with moneylending transactions and had several dealings with the respondent in the past. Nowhere in his evidence did he say he did not know the terms of the contract in the promissory note which he had signed. All what he said was that he did not understand the English language. I see, therefore, no reason to disagree with the finding of the learned magistrate.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong; Dharmananda & Co.*

RATNA AMMAL v. TAN CHOW SOO

[O.C.J. (Raja Azlan Shah J.) June 25, 1966]

[Penang — Civil Suit No. 164 of 1963]

Bills of Exchange — Cheque — Plea that cheque was given for illegal consideration — Barter trade — Bills of Exchange Act, 1882, s. 30(2).

The plaintiff claimed against the defendant as drawer of a cheque for $50,000. In his defence the defendant admitted that he was drawer of the cheque but pleaded that it was given by him to one *M.R.* for an illegal consideration and that the plaintiff was the mother of the said *M.R.* It was alleged that there had been a conspiracy under the terms of which *M.R.* who was employed in the Foreign Exchange Control Department was to assist in getting permits for the export of goods to Indonesia and the cheque was part of a payment to a syndicate consisting of *M.R.*, the staff of the Indonesian consulate in Penang and one *L.*

Held: on the evidence, the defendant had proved that the cheque was given *M.R.* and that at the time it was given it was tainted with illegality and therefore void and as the plaintiff had failed to prove that subsequent to the illegality, value had been given in good faith for the cheque, the claim must be dismissed.

Cases referred to:—

(1) *Tatam* v. *Haslar* (1889), 23 Q.B.D. 354.

(2) *The Board of Trade* v. *Owen* [1957] 2 W.L.R. p. 351 at p.'359.

(3) *Cope* v. *Rowlands* (1836), 2 M. & W. 149; 2 Gale 231; 6 L.J. Ex. 63; 150 E.R. 707.

CIVIL SUIT.

P. P. Dharmananda for the plaintiff.

C. O. Lim for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: The plaintiff claims against the defendant as drawer of cheque No. 459527 for the sum of $50,000 dated 24th January 1961 and drawn by the defendant upon the Nederlandsche Handel-Maatschappy, Penang, (hereinafter referred to as the bank) payable to bearer. She claimed to be the holder of the said cheque on 24th January 1961 and duly presented it for payment on 5th July 1963 but the said cheque was dishonoured, payment thereof having been countermanded by the defendant. The plaintiff gave notice of the dishonour to the defendant by letter dated 6th July 1963. The defendant admits that he was the drawer of the said cheque but pleaded that it was given by him to one Mahalingam Ratnavale for an illegal consideration contrary to public policy or forbidden by statute. He alleged that the plaintiff who is the